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April 29, 2008

Hon. Charles L. Brieant, U.S.D.J.
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

RE: Lynch v. Haim, et al.
08 Civ. 1259 (CLB) (MDF)

Dear Judge Brieant:

We are the attorneys for the defendants Mechaly Haim and PV Holding Corp. in regard to the above captioned matter.

This letter is written in response to the April 25, 2008 Notice of Motion of the defendants Michael S. Cole and ELRAC, Inc. which while moving for certain relief, raises questions as to the Court's subject matter jurisdiction and our removal of same from state court.

Before removing this action from state court, pursuant to the rule of unanimity, I personally spoke with Mr. William J. Muller, Liability Claims Supervisor for ELCO Administrative Services, the claims adjusting arm for Enterprise Rent-A-Car (ELRAC, Inc.) handling this matter on behalf of both defendant Cole, the renter/operator of the ELRAC, Inc. vehicle, and ELRAC itself, and gained his consent to the removal. Based upon the information on the face of plaintiff's complaint, and discussions on diversity with Mr. Muller, it appeared that defendant Cole had a residence in St. Louis, Missouri at the time the action was commenced and at the time of removal. On February 8, 2008, I sent Mr. Muller, by facsimile, a copy of the Notice of Removal. On February 21, 2008, I sent Mr. Muller, again by facsimile, a copy of the Court's scheduling order. On February 25, 2008, defendants Cole and ELRAC, for reasons best known to counsel retained by ELCO Administrative Services, interposed an answer in state court on February 25, 2008.

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Now before the Court is the affidavit of defendant Cole dated April 26, 2008 averring to the fact that he resides in New York, but more importantly, that he "never" resided in Missouri, thus destroying diversity. Notwithstanding that counsel for defendant Cole does not object to federal jurisdiction, the motion before the Court should have been one to dismiss based upon the Court's lack of subject matter jurisdiction rendering the additional relief requested moot. (It appears that our reliance on the face of plaintiff's pleadings was misplaced as plaintiff juxtaposed the state addresses of these defendants.)

By this letter, we hereby consent to remand this case back to New York State Supreme Court, Putnam County.

I have advised counsel for the plaintiff, Mr. Hirshfield, of the foregoing and to our position to which there is no objection. I am waiting for a return telephone call from movants' counsel, Mr. Burns.

Respectfully,

REARDON & SCLAFANI, P.C.

By: 

MICHAEL V. SCLAFANI (MS 9120)

MVS/sl

cc: Law Office of James Killerlane, P.C.
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